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NOTE

Statutory Interpretation in Missouri

*Matthew Davis**

I. INTRODUCTION

Courts often cite canons of construction when interpreting contracts, statutes, and other legal texts. The canons are useful rules of thumb, often referred to as maxims, that suggest which meaning should be ascribed to a disputed word, phrase, or provision.¹ Several canons are policy driven and apply only to certain types of legal texts, but most reflect how people intuitively understand verbal expression and apply to all legal writings.²

Although countless secondary sources discuss the canons used to interpret statutory language,³ few thoroughly focus on the canons cited by Missouri courts.⁴ This four-part Note attempts to fill that void. Part II begins by organizing and concisely stating roughly thirty rules of statutory interpretation. Part III then contends that two of these principles – that the purpose of a statute should be furthered and that absurd outcomes should be avoided – often lend themselves to unpredictable results. Part IV concludes by suggesting one way this unpredictability could be minimized.

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1. See William N. Eskridge, Jr. & Philip P. Frickey, *Foreword: Law As Equilibrium*, 108 HARV. L. REV. 26, 66–68 (1994).

2. Geoffrey P. Miller, *Pragmatics and the Maxims of Interpretation*, 1990 WIS. L. REV. 1179, 1183–89 (observing that the canons are nearly identical to principles used to interpret sacred Hindu texts, the Bible, and the Talmud).

3. See, e.g., ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* (2012); NORMAN J. SINGER & SHAMBIE SINGER, *SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION* (7th ed. 2008) [hereinafter SUTHERLAND].

4. I found only two articles addressing the canons of construction applied by Missouri courts. See Craig A. Sullivan, *Statutory Construction in Missouri*, 59 J. MO. B. 120 (2003); B. Michael Korte, *Canons of Construction*, 29 Mo. Prac., Workers' Compensation Law & Practice § 7.29 (2d ed. 2016).

II. LEGAL BACKGROUND

The majority of this Note is devoted to this Part. The material that follows is divided into two subparts. Subpart A discusses principles routinely cited by the Supreme Court of Missouri when it interprets statutes. To provide an overview, these rules address legislative intent, statutory purpose, ambiguity, “plain” meaning, and the application of the canons. Subpart B collects roughly thirty canons and organizes them according to their relationship to semantics, syntax, context, judicial expectations, and private and governmental rights.

A. Basic Rules of Statutory Interpretation

The Supreme Court of Missouri almost always cites a handful of principles when interpreting statutes. Normally, the court first explains that it must discern legislative intent from the text and interpret the statute to further that intent.⁵ This rule is nearly identical to the presumption against ineffectiveness, which provides that an interpretation furthering the purpose of a statute should be favored.⁶ For purposes of this Note, these rules are considered interchangeable because it is difficult to identify a situation in which both would yield different outcomes.⁷

5. *Stiers v. Dir. of Revenue*, 477 S.W.3d 611, 615 (Mo. 2016) (en banc); *Greer v. SYSCO Food Servs.*, 475 S.W.3d 655, 666 (Mo. 2015) (en banc). Several commentators and judges take issue with this method of interpretation. *See, e.g.*, Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 HARV. L. REV. 417, 417 (1899); Max Radin, *Statutory Interpretation*, 43 HARV. L. REV. 863, 869–70 (1930); Robert H. Jackson, *Problems of Statutory Interpretation*, 8 F.R.D. 121, 124 (1949); Frank H. Easterbrook, *Statutes’ Domains*, 50 U. CHI. L. REV. 533, 534, 536 (1983). In short, these critics contend that relying on “legislative intent” leads to subjectivity, particularly when courts must identify how legislators would have acted in hindsight.

6. *State v. Schleiermacher*, 924 S.W.2d 269, 276 (Mo. 1996) (en banc); *Household Fin. Corp. v. Robertson*, 364 S.W.2d 595, 602 (Mo. 1963) (en banc).

7. An example is *Household Financial Corp. v. Robertson*, a case in which the Supreme Court of Missouri interpreted two clauses in a tax statute. 364 S.W.2d at 597. The first clause obliged every foreign corporation engaged in in-state business to pay a franchise tax based on its “outstanding shares and surplus employed in business in the state.” *Id.* The second provided that a foreign corporation employed in this state pay only “that portion of its entire outstanding shares and surplus that its *property and assets in this state* bear to all of its property and assets wherever located.” *Id.* (emphasis added). The issue was whether the second clause’s omission of the word “employed” before the phrase “in this state” meant that property and assets located out of state could not be taxed. *Id.* The court answered no on grounds that this construction frustrated the purpose of the statute by allowing corporations to employ “their cash on hand and *used in their authorized business in this state* without paying the corporation franchise tax.” *Id.* at 602–03. The court could have reached the same result, however, by concluding that the legislature did not intend to allow

After the court explains that it must interpret statutory language to further legislative intent, it usually sets forth the standard for determining whether a statute is ambiguous. The court has explained that a text is unambiguous if a person of ordinary intelligence would find its meaning plain and clear.⁸ On the other hand, a text is ambiguous only if its language “is subject to more than one reasonable interpretation.”⁹

The court often cites the plain meaning rule as well: “If the intent of the legislature is clear and unambiguous, by giving the language used in the statute its plain and ordinary meaning, then we are bound by that intent and cannot resort to any statutory construction in interpreting the statute.”¹⁰ In other words, the court’s conclusion that a text is unambiguous ends the inquiry and bars arguments based on anything beyond the text of the statute.¹¹

If the text is ambiguous, the canons should be used to identify the legislature’s intended outcome.¹² Because different canons often support different results,¹³ courts essentially apply a balancing test. Although outcome *X* may be supported by one canon, outcome *Y* may carry the day based on several other canons. At this stage, non-textual evidence such as the precise harm that inspired legislative action, the general circumstances surrounding the enactment of a statute, and legislative history may also be used to shed light

corporations to avoid the tax “by the simple expedient of keeping . . . cash in another state and drawing thereon as their needs required.” *Id.*

8. *Wolff Shoe Co. v. Dir. of Revenue*, 762 S.W.2d 29, 31 (Mo. 1988) (en banc).

9. *State v. Liberty*, 370 S.W.3d 537, 548 (Mo. 2012) (en banc). The court has also stated that a statute is ambiguous “when its plain language does not answer the current dispute as to its meaning,” *BASF Corp. v. Dir. of Revenue*, 392 S.W.3d 438, 444 (Mo. 2012) (en banc) (citation omitted), or when there is “duplication, indistinctness or uncertainty of meaning.” *J.B. Vending Co. v. Dir. of Revenue*, 54 S.W.3d 183, 188 (Mo. 2001) (en banc) (citation omitted). As far as I can tell, these standards restate the standard discussed above. After all, statutory language is surely subject to more than one reasonable interpretation if its meaning is unclear, indistinct, or uncertain.

10. *Howard v. City of Kan. City*, 332 S.W.3d 772, 787 (Mo. 2011) (en banc) (citation omitted); see also *Greer*, 475 S.W.3d at 666. The plain meaning rule has received its fair share of criticism, however. See, e.g., 2A SUTHERLAND, *supra* note 3, § 45:3 (taking issue with the claim that an unambiguous text is merely “applied” and not interpreted because “[e]very occasion to determine whether, and how, a statute applies . . . is by definition an occasion to interpret it”); Harry W. Jones, *The Plain Meaning Rule and Extrinsic Aids in the Interpretation of Federal Statutes*, 25 WASH. U. L.Q. 2, 17 (1939) (contending that the rule is simply “applied or ignored . . . at the discretion of the interpreting judges”).

11. *Ben Hur Steel Worx, LLC v. Dir. of Revenue*, 452 S.W.3d 624, 626 (Mo. 2015) (en banc).

12. *Parktown Imports, Inc. v. Audi of Am., Inc.*, 278 S.W.3d 670, 672 (Mo. 2009) (en banc).

13. *Ivie v. Smith*, 439 S.W.3d 189, 203 (Mo. 2014) (en banc); *Howard*, 332 S.W.3d at 787.

on legislative intent.¹⁴ After the court discusses these principles, it typically cites canons applicable to the statute at issue.

B. *Canons of Statutory Interpretation*

Before delving into the canons, a comment regarding their organization might be helpful. Academics often organize the canons under a variety of complex headings.¹⁵ For purposes of this Note, I drew from a treatise written by the late Justice Scalia and Bryan Garner and separated the canons into five categories: (1) canons based on semantics (i.e., the connotation of words and phrases), (2) canons related to syntax (i.e., the arrangement of words and phrases), (3) canons concerning statutory context, (4) canons grounded in judicial expectations concerning statutory law, and (5) canons concerning private and public rights.¹⁶

14. *Templemire v. W & M Welding, Inc.*, 433 S.W.3d 371, 381 (Mo. 2014) (en banc), *modified* (May 27, 2014); *State ex rel. Nixon v. QuikTrip Corp.*, 133 S.W.3d 33, 37 (Mo. 2004) (en banc). Rules of law concerning the use of legislative history seldom appear in decisions. This could be a result of the scarce amount of legislative history produced by the Missouri legislature. This may also be due to Missouri courts' skepticism concerning the usefulness of legislative history. See *Mo. Roundtable for Life, Inc. v. State*, 396 S.W.3d 348, 354 (Mo. 2013) (en banc) (observing that "it is often difficult to tell what the General Assembly would have done simply by looking at the legislative history of a given bill"); *Missourians for Honest Elections v. Mo. Elections Comm'n*, 536 S.W.2d 766, 775 (Mo. Ct. App. 1976) (explaining that statements preceding the passage of a statute "are neither conclusive nor persuasive evidence"). Still, Missouri courts have relied on legislative history when statutory language is ambiguous. See *Bullington v. State*, 459 S.W.2d 334, 338 (Mo. 1970) (considering the Journals of the House and Senate); *State ex rel. Zoological Park Subdistrict of City and Cty. of St. Louis v. Jordan*, 521 S.W.2d 369, 372 (Mo. 1975) (considering amendments to a bill before its passage). Missouri courts have also explained that a legislator's opinion concerning the intent behind a particular law may be taken into account if a statute is ambiguous. See *Commerce Bank of Kan. City, N.A. v. Mo. Div. of Fin.*, 762 S.W.2d 431, 435 (Mo. Ct. App. 1988) (representative's affidavit); *Risk Control Assocs., Inc. v. Melahn*, 822 S.W.2d 531, 535 (Mo. Ct. App. 1991) (senator's affidavit); *Hastings v. Van Black*, 831 S.W.2d 214, 215–16 (Mo. Ct. App. 1992) (representative's testimony).

15. See generally Eskridge & Frickey, *supra* note 1, app. at 97, 98, 99, 101, 105–08 (referencing, among other things, "textual canons," "linguistic inferences," "grammar and syntax," "textual integrity," "extrinsic source canons," "constitution-based canons," "statute-based canons," and "common-law based canons").

16. For the most part, the canons in each category are not listed in any particular order. At most, there are two exceptions. The section concerning semantic canons opens with the ordinary meaning canon for two reasons. First, courts frequently cite the principle. Second, semantic canons that follow the ordinary meaning canon – for example, the conjunctive/disjunctive canon – are essentially applications of the rule to commonly used words and phrases. The section concerning contextual canons opens with the whole text canon for similar reasons. Courts often consider other portions of a statute when they interpret statutory language, and several contextual canons that

1. Semantic Canons

Ordinary Meaning Canon. Words and phrases should bear their ordinary meaning unless the context suggests that they should bear a technical sense.¹⁷ The rationale for this rule is straightforward. “[T]he principle of common sense,” the court recently explained, “requires that courts shall understand [words] as other people would,”¹⁸ and other people would not assume that a word bears “a meaning radically different from that which ordinarily attaches to it [] without some explanation.”¹⁹ Normally, context supplies that explanation. Ordinary meaning should not be expected when a word relates to “any science, business, profession or sport.”²⁰ Ordinary meaning may also be inappropriate when a word is already defined by statute,²¹ bears a well-known meaning at common law,²² or has already been interpreted by the courts or an administrative agency.²³

follow the whole text canon – the presumption of consistent usage, the harmonious reading canon, and the surplusage canon among them – are particular applications of the rule. See SCALIA & GARNER, *supra* note 3, at xi–xvii.

17. *State v. Jones*, 479 S.W.3d 100, 106 (Mo. 2016) (en banc); *Campbell v. Cty. Comm’n of Franklin Cty.*, 453 S.W.3d 762, 768 (Mo. 2015) (en banc).

18. *State v. Liberty*, 370 S.W.3d 537, 549 n.16 (Mo. 2012) (en banc) (citation omitted).

19. *State v. Plotner*, 222 S.W. 767, 770 (Mo. 1920).

20. *Rathjen v. Reorganized Sch. Dist. R-II of Shelby Cty.*, 284 S.W.2d 516, 523 (Mo. 1955) (en banc).

21. If the legislature has defined a term by statute, that definition generally controls. *Campbell*, 453 S.W.3d at 768; see also MO. REV. STAT. § 1.020 (Cum. Supp. 2013) (explaining that each definition set forth in Title 1, Chapter 1 of the Missouri Revised Statutes governs unless another definition is “specially provided” or its application is “plainly repugnant” to legislative intent or the context).

22. *Belcher v. State*, 299 S.W.3d 294, 296 (Mo. 2009) (en banc) (explaining that a common law term should bear its common law meaning unless the context clearly demonstrates that this result was unintended).

23. See, e.g., *State ex rel. Proctor v. Messina*, 320 S.W.3d 145, 155 (Mo. 2010) (en banc) (explaining that a term that has already received an authoritative judicial interpretation acquires a technical legal sense and should bear that meaning); *Balloons over the Rainbow, Inc. v. Dir. of Revenue*, 427 S.W.3d 815, 825–26 (Mo. 2014) (en banc) (noting that if the legislature enacts a statute using a term that has already received an authoritative judicial interpretation, courts presume the legislature intended to adopt that interpretation); *Hayes v. City of Kan. City*, 241 S.W.2d 888, 892 (Mo. 1951) (observing that if the legislature closely copies the statute of another state after the highest court of that state has construed a term within that statute, courts presume the legislature intended to adopt that interpretation); *Farrow v. Saint Francis Med. Ctr.*, 407 S.W.3d 579, 592 (Mo. 2013) (en banc) (explaining that the long-standing interpretation of a statute by an administrative agency charged with its construction is entitled to deference unless the statute is unambiguous).

Presumption of Illustrative “Include.” The word “include” sets forth examples, not an exhaustive list.²⁴ Although some courts have observed that the term may be “ambiguous and its meaning may vary according to the context,”²⁵ an appellate court recently surveyed Missouri cases and found that the term “has almost universally been construed . . . as a term of enlargement.”²⁶

Conjunctive/Disjunctive Canon. “And” ordinarily bears its conjunctive sense and means “along with or together with,”²⁷ while “or” normally bears its disjunctive sense and denotes a choice between “either this or that.”²⁸ But “and” may mean “or” (and vice versa) when a literal interpretation would ignore legislative intent, result in absurdity, or amount to a refusal to correct a mistake.²⁹

Mandatory/Discretionary Canon. The word “shall” normally imposes a mandatory duty,³⁰ while the word “may” ordinarily grants discretion.³¹ But for statutes providing that public actors “shall” perform some act, the outcome turns on whether there is a sanction for noncompliance.³² A statute is mandatory if it prescribes a sanction for noncompliance³³ but discretionary if it does not.³⁴

Subordinating/Superordinating Canon. Subordinating language such as “subject to” resolves statutory conflict by signaling that a provision “subject to” another provision will yield if conflict arises.³⁵ Superordinating language such as “notwithstanding” also remedies statutory conflict by indicating that a

24. *Kieffer v. Kieffer*, 590 S.W.2d 915, 918 (Mo. 1979) (en banc); *St. Louis Cty. v. State Highway Comm’n*, 409 S.W.2d 149, 153 (Mo. 1966).

25. *Kieffer*, 590 S.W.2d at 918.

26. *Short v. S. Union Co.*, 372 S.W.3d 520, 532–33 (Mo. Ct. App. 2012).

27. *Stiers v. Dir. of Revenue*, 477 S.W.3d 611, 615 (Mo. 2016) (en banc).

28. *Council Plaza Redevelopment Corp. v. Duffey*, 439 S.W.2d 526, 532 (Mo. 1969) (en banc); *Norberg v. Montgomery*, 173 S.W.2d 387, 390 (Mo. 1943) (en banc).

29. *Stiers*, 477 S.W.3d at 615; *801 Skinker Boulevard Corp. v. Dir. of Revenue*, 395 S.W.3d 1, 5 (Mo. 2013) (en banc), *modified* (Feb. 26, 2013).

30. *State ex rel. State v. Parkinson*, 280 S.W.3d 70, 76 (Mo. 2009) (en banc); *Bauer v. Transitional Sch. Dist. of City of St. Louis*, 111 S.W.3d 405, 408 (Mo. 2003) (en banc).

31. *State ex rel. Dresser Indus., Inc. v. Ruddy*, 592 S.W.2d 789, 794–95 (Mo. 1980) (en banc).

32. *Frye v. Levy*, 440 S.W.3d 405, 409–10 (Mo. 2014) (en banc).

33. *Id.*; *Garzee v. Sauro*, 639 S.W.2d 830, 832 (Mo. 1982).

34. *Williams v. State, Dep’t of Soc. Servs., Children’s Div.*, 440 S.W.3d 425, 428 (Mo. 2014) (en banc). Some opinions suggest, however, that a sanction may not be dispositive if the statute makes clear that the act is mandatory. *See Frye*, 440 S.W.3d at 409–10 (explaining that a statute may be mandatory if it explicitly provides that an act “can be taken *only* before the stated deadline or can be performed *only* in the stated manner”).

35. *Weinstock v. Holden*, 995 S.W.2d 411, 418 (Mo. 1999) (en banc).

provision “notwithstanding” another will prevail if conflict arises.³⁶ When a statute contains a “notwithstanding” clause, conflict arises only if the provision with which it clashes also has a “notwithstanding” clause.³⁷

Omitted Case Canon. The court repeatedly explains that unambiguous statutes should be interpreted as they are written, not as they might have been written in hindsight.³⁸ This principle could be considered an extension of the plain meaning rule. If the task of a court is simply to apply an unambiguous text, it follows that a court should not interpret that text as if it covers other matters.

Negative Implication Canon. The expression of one thing normally implies the exclusion of another.³⁹ For example, a statute taxing the sale of “meals and drinks furnished [at a] place in which . . . meals or drinks are regularly served to the public” does not tax the sale of meals and drinks served at private country clubs.⁴⁰ The court occasionally observes that this rule – more commonly referred to as *expressio (or inclusio) unius est exclusio alterius* – “must be applied with great caution.”⁴¹ Unless there is a strong and natural inference that the thing omitted was intentionally excluded, the court may conclude that the rule is inapplicable.⁴²

Gender/Number Canon. Unless the context clearly suggests otherwise, the masculine includes the feminine (and vice versa),⁴³ and the singular includes the plural (and vice versa).⁴⁴

2. Syntactic Canons

Grammar/Punctuation Canon. Grammar and punctuation are permissible indicators of meaning when statutory language is ambiguous.⁴⁵ However,

36. *Earth Island Inst. v. Union Elec. Co.*, 456 S.W.3d 27, 33–34 (Mo. 2015) (en banc); *Kidde Am., Inc. v. Dir. of Revenue*, 242 S.W.3d 709, 712 (Mo. 2008) (en banc).

37. *State ex rel. City of Jennings v. Riley*, 236 S.W.3d 630, 632 (Mo. 2007) (en banc).

38. *State v. Hardin*, 429 S.W.3d 417, 420 (Mo. 2014) (en banc); *Loren Cook Co. v. Dir. of Revenue*, 414 S.W.3d 451, 454 (Mo. 2013) (en banc).

39. *Six Flags Theme Parks, Inc. v. Dir. of Revenue*, 179 S.W.3d 266, 269–70 (Mo. 2005) (en banc).

40. *Greenbriar Hills Country Club v. Dir. of Revenue*, 935 S.W.2d 36, 38 (Mo. 1996) (en banc).

41. *Six Flags*, 179 S.W.3d at 269–70; *Springfield City Water Co. v. City of Springfield*, 182 S.W.2d 613, 618 (Mo. 1944).

42. *Six Flags*, 179 S.W.3d at 270.

43. *State v. Stokely*, 842 S.W.2d 77, 80 (Mo. 1992) (en banc); see also MO. REV. STAT. § 1.030.2 (2000).

44. *State ex rel. BJC Health Sys. v. Neill*, 121 S.W.3d 528, 530 (Mo. 2003) (en banc), modified on denial of reh'g (Dec. 23, 2003); *State ex inf. Gentry v. Long-Bell Lumber Co.*, 12 S.W.2d 64, 80 (Mo. 1928) (en banc).

45. *State ex rel. Pearson v. La. & M. R. R. Co.*, 114 S.W. 956, 958 (Mo. 1908).

the Supreme Court of Missouri has explained that courts should be reluctant to discern meaning solely from grammar or punctuation,⁴⁶ particularly when an unreasonable or absurd result follows.⁴⁷

Last Antecedent Rule. Relative and qualitative words, phrases, or clauses generally apply only to the words or phrases immediately preceding them.⁴⁸ To provide an example, the court once examined a constitutional amendment defining “residential property” as “all real property improved by a structure which is used or intended to be used for residential living . . . and which contains not more than four dwelling units.”⁴⁹ Applying the rule, the court concluded that the phrase “which contains not more than four dwelling units” modified “structure” – the nearest referent – rather than “all real property.”⁵⁰ The court has explained, however, that the rule should not apply if the relative or qualitative clause is equally applicable to all terms at issue.⁵¹ For example, the court found the rule did not apply to a statute defining the term “accounting officer” as “the county clerk, county comptroller, county auditor, accountant, or other officer or employee *keeping the principal records of the county.*”⁵² Viewing the provision as a whole, the court reasoned that the phrase “keeping the principal records of the county” was equally applicable to all positions.⁵³

Proviso Canon. A proviso (e.g., “provided”) generally carves out an exception to the text that immediately precedes it.⁵⁴ Older opinions provide some basis for arguing that the use of language which would otherwise create a proviso should be construed in a conjunctive sense.⁵⁵

46. *Abrams v. Ohio Pac. Express*, 819 S.W.2d 338, 340 (Mo. 1991) (en banc).

47. *State ex rel. Geaslin v. Walker*, 257 S.W. 470, 472 (Mo. 1924) (en banc).

48. *Spradling v. SSM Health Care St. Louis*, 313 S.W.3d 683, 688 (Mo. 2010) (en banc); *Rothschild v. State Tax Comm’n of Mo.*, 762 S.W.2d 35, 37 (Mo. 1988) (en banc).

49. *Rothschild*, 762 S.W.2d at 36–37.

50. *Id.* at 37.

51. *Spradling*, 313 S.W.3d at 688; *Norberg v. Montgomery*, 173 S.W.2d 387, 390 (Mo. 1943) (en banc).

52. *Norberg*, 173 S.W.2d at 389.

53. *Id.* at 390–91.

54. *State ex rel. McMonigle v. Spears*, 213 S.W.2d 210, 213 (Mo. 1948) (en banc), *abrogated as recognized in City of Chesterfield v. Dir. of Revenue*, 811 S.W.2d 375 (Mo. 1991) (en banc); *Smith v. Pettis Cty.*, 136 S.W.2d 282, 287–88 (Mo. 1940).

55. *McMonigle*, 213 S.W.2d at 213; *Bowers v. Mo. Mut. Ass’n*, 62 S.W.2d 1058, 1063 (Mo. 1933).

3. Contextual Canons

Whole Text Canon. Ambiguous statutory language should be read in light of the entire statute, not in isolation.⁵⁶ Any part of a statute, including its title and preamble,⁵⁷ may be used to shed light on which meaning of a word, phrase, or provision should be favored.

Presumption of Consistent Usage. Courts presume that a particular word or phrase bears the same meaning throughout a statute.⁵⁸ The more often different – though seemingly synonymous – words or phrases appear within a statute, the stronger the presumption that they bear distinct meanings.⁵⁹ To provide an illustration, the court once relied on this principle when interpreting two sections of a statute concerning mental health facilities.⁶⁰ One authorized a sheriff to deny a concealed carry permit to an applicant who had been “committed to a mental health facility.”⁶¹ The other authorized temporary, involuntary “detention” in a mental health facility for an evaluation.⁶² The dispute arose when a sheriff denied the plaintiff’s application for a concealed carry permit on grounds that the plaintiff had been “committed” due to his prior “detention” in a mental health facility.⁶³ After the trial court upheld the denial of the plaintiff’s application, the Supreme Court of Missouri reversed, explaining that:

If the legislature intended for the terms “committed” and “detention” to have the same meaning, it could have utilized consistent terminology by using one term or the other. Holding that the term “committed”

56. *St. Louis Cty. v. Prestige Travel, Inc.*, 344 S.W.3d 708, 714 (Mo. 2011) (en banc); *Util. Serv. Co. v. Dep’t of Labor & Indus. Relations*, 331 S.W.3d 654, 658 (Mo. 2011) (en banc).

57. *Gurley v. Mo. Bd. of Private Investigator Exam’rs*, 361 S.W.3d 406, 413 (Mo. 2012) (en banc) (discussing the use of a statute’s title); *Lackland v. Walker*, 52 S.W. 414, 430 (Mo. 1899) (discussing the use of a statute’s preamble). The court has stated, however, that chapter, article, or section headings may not be used on the theory that these markings, unlike titles and preambles, are not part of the statute and have been added after the fact merely for the convenience of the reader. *Gurley*, 361 S.W.3d at 413.

58. *See Nelson v. Crane*, 187 S.W.3d 868, 870 (Mo. 2006) (en banc).

59. *Alberici Constructors, Inc. v. Dir. of Revenue*, 452 S.W.3d 632, 638 (Mo. 2015) (en banc); *Nelson*, 187 S.W.3d at 870. The court has added that the reenactment of a statute containing synonymous though different terms further “emphasizes that both words have distinct meanings.” *See Cox v. Dir. of Revenue*, 98 S.W.3d 548, 550 (Mo. 2003) (en banc).

60. *See Nelson*, 187 S.W.3d at 868.

61. *Id.* at 870.

62. *Id.*

63. *Id.*

. . . is synonymous with the term “detention” . . . would render superfluous the distinct terminology employed by the legislature.⁶⁴

Surplusage Canon. Ideally, “every word, clause, sentence, and provision of a statute” should be given effect.⁶⁵ Because each word of a statute is presumed to have been included for a particular purpose, an interpretation rendering statutory language redundant or without meaning is disfavored.⁶⁶ The court recently applied this canon to a statute exempting “materials” from a use tax.⁶⁷ To avoid the tax, the plaintiff contended that “materials” included “machinery” such as cranes and a welder.⁶⁸ The court disagreed, explaining that reading “materials” to include “machinery” would create redundancy in a separate section discussing “[m]aterials, manufactured goods, machinery and parts.”⁶⁹

Harmonious Reading Canon. The provisions of a statute should be construed to avoid conflict, mainly on the theory that a statute is passed as a unified whole and its parts are directed towards one coherent purpose.⁷⁰ As a result, courts disfavor interpretations that would cause one provision of a statute to clash with its counterparts.⁷¹ For example, the Supreme Court of Missouri once applied this canon to avoid potential conflict in a statute governing tax proposals.⁷² The second subsection required all county ballots for a sales tax to specify the tax rate, the duration of the tax, and a designated capital improvement purpose.⁷³ After the people of Wayne County approved a ballot that imposed a tax of an indefinite duration, the plaintiffs argued that the tax was unauthorized because the second subsection imposed a mandatory time limit.⁷⁴ The court disagreed on grounds that a mandatory time limit was incompatible with the rest of the statute.⁷⁵ Although the second subsection required all ballots to specify the duration of the tax, the court reasoned that the tax could be imposed for an indefinite duration because the first subsec-

64. *Id.*

65. 801 Skinker Boulevard Corp. v. Dir. of Revenue, 395 S.W.3d 1, 5 (Mo. 2013) (en banc), *modified* (Feb. 26, 2013); *see also* State v. Jones, 479 S.W.3d 100, 106 (Mo. 2016) (en banc).

66. Saint Charles Cty. v. Dir. of Revenue, 407 S.W.3d 576, 578 (Mo. 2013) (en banc).

67. Alberici Constructors, Inc. v. Dir. of Revenue, 452 S.W.3d 632, 636 (Mo. 2015) (en banc).

68. *Id.* at 638.

69. *Id.* (alteration in original).

70. *See* State *ex rel.* Evans v. Brown Builders Elec. Co., 254 S.W.3d 31, 35 (Mo. 2008) (en banc).

71. Hovis v. Daves, 14 S.W.3d 593, 596 (Mo. 2000) (en banc).

72. *Id.* at 593.

73. *Id.* at 595.

74. *Id.* at 594.

75. *Id.* at 595–96.

tion failed to mention the tax's duration, and the third subsection specified that the tax could terminate upon repeal.⁷⁶

General/Specific Canon. Occasionally, statutory provisions clash and cannot be reconciled so that both are given effect. When there is only partial conflict, the specific provision governs to the extent that it clashes with the general one.⁷⁷ In other words, the specific provision is an exception to its general counterpart.⁷⁸ The court recently applied this canon to two statutes concerning the authority of the Director of the Department of Corrections (“Director”).⁷⁹ The Director, relying on a statute that authorized him to enact rules governing prison management, denied the defendant, an inmate on death row, the right to select a witness to his execution.⁸⁰ In response, the defendant cited another statute that obligated the Director upon request to allow designated individuals to witness an execution.⁸¹ The court ruled in favor of the defendant, explaining that the statute imposing specific duties concerning execution prevailed to the extent that it clashed with the statute granting the Director general discretion to enact rules.⁸²

Presumption Against Absurdity. Because courts presume that the legislature enacts rational statutes, constructions that yield absurd results are disfavored.⁸³ When an unambiguous statute yields an absurd result, courts may correct verbal inaccuracies, clerical errors, or misprints.⁸⁴ Although the Supreme Court of Missouri has cautioned that the power to correct these errors should be exercised sparingly,⁸⁵ it has not provided guidance concerning what sort of outcome is so “absurd” that an unambiguous statute may be ignored or corrected. As discussed below, the court has occasionally found sufficient absurdity when an outcome appears to defeat the broader purpose of a statute. More stringent standards exist, however. According to the leading treatise in the field, an absurd outcome is one “so unreasonable ‘as to shock general

76. *Id.* at 596.

77. *State ex rel. Taylor v. Russell*, 449 S.W.3d 380, 382 (Mo. 2014) (en banc); *Turner v. Sch. Dist. of Clayton*, 318 S.W.3d 660, 668 (Mo. 2010) (en banc).

78. *S. Metro. Fire Prot. Dist. v. City of Lee’s Summit*, 278 S.W.3d 659, 666 (Mo. 2009) (en banc).

79. *Russell*, 449 S.W.3d at 380. The general/specific canon also applies to related statutes, which are discussed *infra* Part II.B.4.

80. *Russell*, 449 S.W.3d at 381–82.

81. *Id.* at 382.

82. *Id.*

83. *State v. Nash*, 339 S.W.3d 500, 508 (Mo. 2011) (en banc); *Reichert v. Bd. of Educ. of City of St. Louis*, 217 S.W.3d 301, 305 (Mo. 2007) (en banc).

84. *Learned v. Godfrey*, 461 S.W.2d 5, 7 (Mo. 1970) (en banc); *Deimeke v. State Highway Comm’n*, 444 S.W.2d 480, 482 (Mo. 1969).

85. *St. Louis Sw. Ry. Co. v. Loeb*, 318 S.W.2d 246, 252 (Mo. 1958) (en banc); *State v. Hacker*, 214 S.W.2d 413, 416 (Mo. 1948).

common sense.”⁸⁶ Two other commentators suggest that an absurd outcome is “a disposition that no reasonable person could approve.”⁸⁷

Predicate Act Canon. A text authorizing an act impliedly authorizes all necessary predicate acts.⁸⁸ To provide an example, a grant of authority “to issue bonds for the purpose of raising funds to pay for the construction of roads[] necessarily carries with it the authority to pay for rights-of-way upon which to build the roads.”⁸⁹ Though the canon can apply to private affairs – for instance, authorization to mow a yard impliedly authorizes trespass – it normally applies in the context of governmental powers.⁹⁰

Associated Words Canon. The meaning of an unclear word or phrase may be determined by reference to the words immediately surrounding it.⁹¹ When words are grouped in a list, courts presume that the meaning of an unclear word within that list is similar to those also listed.⁹² For example, kitchen equipment used to prepare food would not fall within the scope of a statute providing a tax exemption for machinery “used directly in manufacturing, mining, fabricating, or producing a product,” due to the industrial connotations of the terms listed.⁹³

Ejusdem Generis. Where general words follow an enumeration of two or more things, those general words encompass only things of the same kind or class specifically mentioned.⁹⁴ For example, a statute proscribing the use of “bombs, dynamite, nitroglycerine or other kinds of explosives” will be construed to prohibit the use of potentially lethal explosives, not non-lethal explosives such as firecrackers.⁹⁵ The presence of a catch-all phrase such as “or other” does not always mean that *ejusdem generis* applies, however. Although there are several situations in which the rule is inapplicable,⁹⁶ the most

86. 2B SUTHERLAND, *supra* note 3, § 54:6.

87. SCALIA & GARNER, *supra* note 3, § 37.

88. *Reilly v. Sugar Creek Twp. of Harrison Cty.*, 139 S.W.2d 525, 526 (Mo. 1940).

89. *Id.*

90. 2B SUTHERLAND, *supra* note 3, § 55:4.

91. *Alberici Constructors, Inc. v. Dir. of Revenue*, 452 S.W.3d 632, 638 (Mo. 2015) (en banc); *Union Elec. Co. v. Dir. of Revenue*, 425 S.W.3d 118, 122 (Mo. 2014) (en banc).

92. *Union Elec. Co.*, 425 S.W.3d at 122.

93. *Brinker Mo., Inc. v. Dir. of Revenue*, 319 S.W.3d 433, 437 (Mo. 2010) (en banc).

94. *Circuit City Stores, Inc. v. Dir. of Revenue*, 438 S.W.3d 397, 401 (Mo. 2014) (en banc); *Pollard v. Bd. of Police Comm’rs*, 665 S.W.2d 333, 341 n.12 (Mo. 1984) (en banc).

95. *State v. Lancaster*, 506 S.W.2d 403, 404–05 (Mo. 1974) (per curiam).

96. A less common situation is when the specific items “exhaust the class” to which they belong. *State v. Smith*, 135 S.W. 465, 468 (Mo. 1911). To provide an example, consider a statute addressing “elevated, underground, and other street railroads.” *Ruckert v. Grand Ave. Ry. Co.*, 63 S.W. 814, 817 (Mo. 1901). The class represented by the specifics is street railroads that do not operate at surface level. That class, however, consists entirely of street railroads that are “elevated” or “under-

common is when the enumerated things are so different in nature that they do not fall within a common category.⁹⁷

4. Expected-Meaning Canons

Related Statutes Canon. Ambiguous statutory language should be read in light of separate statutes concerning the same subject matter, more commonly known as statutes *in pari materia*.⁹⁸ Related statutes are “governed by one spirit and policy,” just as the provisions of one statute are directed towards one general purpose.⁹⁹ Related statutes, like the provisions of a single statute, should therefore be construed together as one act to avoid conflict.¹⁰⁰ To avoid inconsistency, a particular word or phrase concerning a specific subject – taxes, for example – should bear the same meaning in statutes concerning that subject, just as a particular word or phrase found within one provision of a statute should bear the same meaning throughout the text.¹⁰¹ As a result, an interpretation which would ascribe two different meanings to a particular word or phrase – one in the statute at issue, the other in a related statute – is disfavored.¹⁰²

To provide an illustration, the court was once asked to determine whether a school district had complied with a statute that obliged it to fix tax rates “to produce substantially the same revenues as required in the annual budget.”¹⁰³ A related statute contained the phrase “substantially the same amount of taxes,” which the court had previously construed to mean “practically,” “nearly,” “almost,” “essentially,” and “virtually” the same amount of taxes.¹⁰⁴ Because both statutes involved similar subject matter and used nearly identi-

ground.” Because “other street railroads” would be of no consequence if it were limited to that class (i.e., surplusage), the phrase must bear its general meaning and would embrace surface street railways. *See id.* at 818. Another uncommon situation is governed by the rule of rank, which provides that a general word will not apply to objects of a higher quality than those specifically enumerated. 2A SUTHERLAND, *supra* note 3, § 47:19. To illustrate this exception, commentators often observe that a statute imposing a tax on “copper, brass, pewter and tin and all other metals” would not tax metals of a higher quality such as gold and silver. *Id.* § 47:19.

97. *See State v. Eckhardt*, 133 S.W. 321, 322 (Mo. 1910) (explaining that the maxim would not apply to a statute proscribing the abandonment of a child in “a street or field, or like place” because the terms “street” and “field” are entirely unrelated).

98. *Williams v. State*, 386 S.W.3d 750, 754 (Mo. 2012) (en banc).

99. *State v. Duggar*, 806 S.W.2d 407, 409 (Mo. 1991) (en banc).

100. *Earth Island Inst. v. Union Elec. Co.*, 456 S.W.3d 27, 33 (Mo. 2015) (en banc); *Union Elec. Co. v. Dir. of Revenue*, 425 S.W.3d 118, 122 (Mo. 2014) (en banc).

101. *See Lane v. Lensmeyer*, 158 S.W.3d 218, 228 (Mo. 2005) (en banc).

102. *Union Elec. Co.*, 425 S.W.3d at 122; *Cook Tractor Co. v. Dir. of Revenue*, 187 S.W.3d 870, 873 (Mo. 2006) (en banc).

103. *Lane*, 158 S.W.3d at 226.

104. *Id.* at 227.

cal language, the court concluded that the statute in question obligated the school district to fix its rate to produce “practically,” “nearly,” “almost,” “essentially,” and “virtually” the same revenues as required in the annual budget.¹⁰⁵ Related statutes may be considered even if they were enacted at different times, though the court has added that they have more persuasive force when they were passed in the same legislative session as the text at issue.¹⁰⁶

Presumption Against Implied Repeal. Statutory provisions may be entirely contradictory. For example, one statutory provision might authorize the conduct that another plainly prohibits. Because both statutory provisions cannot be given effect, the later-appearing law impliedly repeals the earlier-appearing law.¹⁰⁷ The rationale for this rule is that a later-appearing statutory provision is the last legislative announcement on the matter and should prevail.¹⁰⁸ Because courts favor interpretations that reconcile conflict, this outcome is disfavored.¹⁰⁹ However, repeals by implication are justified on grounds that the legislature does not intend “to leave on the statute books two contradictory enactments.”¹¹⁰

A decision handed down by the court in the early part of the twentieth century provides an excellent illustration.¹¹¹ One section of a statute declared it a felony to “willfully and maliciously kill, maim or wound” another’s horse, but the very next declared the same conduct a misdemeanor.¹¹² After the defendant broke into a stable, maimed a horse, and was convicted for second-degree burglary,¹¹³ he argued that he could not lawfully be charged with second-degree burglary – “breaking and entering . . . with intent to . . . commit a *felony* therein” – because he committed a misdemeanor.¹¹⁴ The court agreed and reversed the conviction, explaining that the later-appearing section that declared his conduct a misdemeanor repealed the earlier-appearing one that declared his conduct a felony.¹¹⁵

Presumption Against Change in the Common Law. When it is uncertain whether a statute displaces common law rights, courts retain the common

105. *Id.* at 228.

106. *See* State, Dep’t of Labor & Indus. Relations, Div. of Labor Standards v. SKC Elec., Inc., 936 S.W.2d 802, 805 (Mo. 1997) (en banc).

107. *Earth Island Inst. v. Union Elec. Co.*, 456 S.W.3d 27, 35 (Mo. 2015) (en banc); *St. Charles Cty. v. Dir. of Revenue*, 961 S.W.2d 44, 47 (Mo. 1998) (en banc).

108. *Edwards v. St. Louis Cty.*, 429 S.W.2d 718, 721 (Mo. 1968) (en banc); *State v. Taylor*, 85 S.W. 564, 567 (Mo. 1905).

109. *St. Charles Cty.*, 961 S.W.2d at 47; *Cty. of Jefferson v. Quiktrip Corp.*, 912 S.W.2d 487, 490 (Mo. 1995) (en banc).

110. *State ex rel. & to Use of George B. Peck Co. v. Brown*, 105 S.W.2d 909, 911–12 (Mo. 1937) (en banc).

111. *See Taylor*, 85 S.W. at 564.

112. *Id.* at 565.

113. *Id.* at 564–65.

114. *Id.* at 565.

115. *Id.*

law.¹¹⁶ A statute will not be interpreted to preempt a common law claim unless it does so clearly.¹¹⁷ Absent clear preemptory language, a statutory right of action will not supplant common law remedies unless the statutory remedy “fully comprehends and envelops” them.¹¹⁸ And even if a statute alters the common law, any doubt concerning the extent of this alteration is construed in favor of making the least change.¹¹⁹

Reenactment Canon. Courts presume that the changes made in a statute upon its reenactment are meant to change its meaning, mainly on the theory that the legislature does not engage in “meaningless acts of housekeeping.”¹²⁰

Presumption of Constitutional Validity. Courts presume that most statutes are constitutionally valid on grounds that the legislature is aware of its constitutional limitations.¹²¹ As a result, courts disfavor an interpretation that would render an ambiguous statute unconstitutional when the statute is susceptible to any reasonable construction upholding its constitutionality.¹²² To prove that a statute is unconstitutional, a challenger must show that one of its provisions “clearly and undoubtedly” or “plainly and palpably” violates a constitutional provision.¹²³

Presumption Against Retroactivity. The court has interpreted our constitutional prohibition against retroactive laws to proscribe only substantive laws.¹²⁴ Substantive laws “relate to the rights and duties giving rise to a

116. *State ex rel. KCP & L Greater Mo. Operations Co. v. Cook*, 353 S.W.3d 14, 20–21 (Mo. Ct. App. 2011); *In re Estate of Parker*, 25 S.W.3d 611, 614–15 (Mo. Ct. App. 2000).

117. *Cook*, 353 S.W.3d at 20; *Overcast v. Billings Mut. Ins. Co.*, 11 S.W.3d 62, 69 (Mo. 2000) (en banc). For an example of clear preemption, see MO. ANN. STAT. § 1.010 (West 2016).

118. *Cook*, 353 S.W.3d at 20; *In re Estate of Williams v. Williams*, 12 S.W.3d 302, 307 (Mo. 2000) (en banc).

119. *Williams*, 12 S.W.3d at 307.

120. *State v. Liberty*, 370 S.W.3d 537, 552 (Mo. 2012) (en banc); *Cox v. Dir. of Revenue*, 98 S.W.3d 548, 550 (Mo. 2003) (en banc).

121. *Hill v. Boyer*, 480 S.W.3d 311, 313–14 (Mo. 2016) (en banc); *State v. Meacham*, 470 S.W.3d 744, 746 (Mo. 2015) (en banc); *State ex rel. McClellan v. Godfrey*, 519 S.W.2d 4, 8–9 (Mo. 1975) (en banc).

122. *Meacham*, 470 S.W.3d at 746; *State v. Burnau*, 642 S.W.2d 621, 623 (Mo. 1982) (en banc).

123. *Boyer*, 480 S.W.3d at 314; *Meacham*, 470 S.W.3d at 746. If the challenger meets this burden, the unconstitutional provision will be severed, and the remaining provisions will normally remain in effect. See MO. REV. STAT. § 1.140 (2000). But if the valid provisions cannot be properly executed or are dependent upon the void provision, the entire statute will be invalidated. *State ex rel. Bunker Res. Recycling & Reclamation, Inc. v. Mehan*, 782 S.W.2d 381, 389 (Mo. 1990) (en banc); *Simpson v. Kilcher*, 749 S.W.2d 386, 393 (Mo. 1988) (en banc), *overruled by Kilmer v. Mun*, 17 S.W.3d 545 (Mo. 2000) (en banc).

124. *Doe v. Roman Catholic Diocese of Jefferson City*, 862 S.W.2d 338, 341 (Mo. 1993) (en banc).

cause of action”¹²⁵ and may take one of several forms. For example, laws that impair a vested right, impose a new duty, or attach a disability on past transactions are substantive.¹²⁶ A substantive law normally does not apply retroactively unless it expressly states or unavoidably implies otherwise.¹²⁷ A procedural law, on the other hand, applies retroactively unless the legislature expressly states otherwise.¹²⁸ If a law is both substantive and procedural, the substantive part applies prospectively and the non-substantive part applies retroactively.¹²⁹ For example, a statute of limitation relates to processing a cause of action and provides a defendant a vested right to be free from suit once it expires.¹³⁰ As a result, laws authorizing causes of action that are otherwise barred under a statute of limitation violate the constitutional prohibition against retroactive laws.¹³¹

Pending Action Canon. If a statute is altered during the pendency of a lawsuit, a court must apply the new version of the law, unless doing so would violate a vested right, impair a duty, or impose a disability on a past transaction.¹³²

5. Rights-Based Canons

Presumption Against Waiver of Sovereign Immunity. A statute does not waive state sovereign immunity unless its language clearly indicates otherwise.¹³³ The most common way to waive sovereign immunity is “to specifically state that sovereign immunity is waived,” but any “express statement of the legislature’s intent to allow itself to be sued” suffices.¹³⁴

Rule of Lenity. An ambiguity in a penal statute is construed in favor of the accused.¹³⁵ Although this rule traditionally applies to statutes that define

125. *Id.*

126. *Rentschler v. Nixon*, 311 S.W.3d 783, 788 (Mo. 2010) (en banc), *modified on denial of reh’g* (May 11, 2010); *Barbieri v. Morris*, 315 S.W.2d 711, 714 (Mo. 1958); *see also* MO. REV. STAT. § 1.170.

127. *State v. Merritt*, 467 S.W.3d 808, 812 (Mo. 2015) (en banc); *State ex rel. Schottel v. Harman*, 208 S.W.3d 889, 892 (Mo. 2006) (en banc).

128. *State ex rel. Riordan v. Dierker*, 956 S.W.2d 258, 260 (Mo. 1997) (en banc).

129. *Roman Catholic Diocese of Jefferson City*, 862 S.W.2d at 338.

130. *Id.*

131. *Id.*

132. *Keeran v. Myers*, 172 S.W.3d 466, 468 (Mo. Ct. App. 2005); *see also State v. Graham*, 13 S.W.3d 290, 292–93 (Mo. 2000) (en banc) (construing pre-2005 version of the governing law).

133. *Garland v. Ruhl*, 455 S.W.3d 442, 446 (Mo. 2015) (en banc); *Zweig v. Metro. St. Louis Sewer Dist.*, 412 S.W.3d 223, 246–47 (Mo. 2013) (en banc).

134. *Bachtel v. Miller Cty. Nursing Home Dist.*, 110 S.W.3d 799, 804 (Mo. 2003) (en banc).

135. *State v. Graham*, 204 S.W.3d 655, 656 (Mo. 2006) (en banc); *Woods v. State*, 176 S.W.3d 711, 712 (Mo. 2005) (en banc).

criminal behavior and provide for sentencing,¹³⁶ it may also apply when the violation of a civil statute yields penal consequences.¹³⁷

Presumption Against Taxation. Unless the government demonstrates “specific or clearly implied authority for a tax,”¹³⁸ an ambiguity in a statute levying taxes is construed in favor of the taxpayer.¹³⁹ The taxpayer and government exchange places, however, when a tax exemption is at issue. Unless the taxpayer establishes “by clear and unequivocal proof that it qualifies for [the] exemption,”¹⁴⁰ an ambiguity in a tax exemption is construed in the government’s favor on the theory that granting a tax exemption amounts to a renunciation of sovereignty.¹⁴¹

Presumption Against Implied Cause of Action. Merely because a statute proscribes an act does not impliedly create a private cause of action for its violation, particularly when there are other means of enforcement and a private remedy does not further the statutory purpose.¹⁴² A private cause of action will not be recognized unless it is expressly found in or clearly implied from the text.¹⁴³

Presumption Against Narrowly Applying Remedial Statutes. A remedial statute is broadly defined as any statute enacted to protect life, property, or the public welfare.¹⁴⁴ When it is uncertain whether a remedial statute applies, courts resolve the ambiguity in favor of its application.¹⁴⁵ There are a handful of standards concerning the construction of remedial statutes,¹⁴⁶ but the

136. *United Pharmacal Co. of Mo., Inc. v. Mo. Bd. of Pharmacy*, 208 S.W.3d 907, 913 (Mo. 2006) (en banc); *Woods*, 176 S.W.3d at 712–713.

137. *J.S. v. Beard*, 28 S.W.3d 875, 877 (Mo. 2000) (en banc); *United Pharmacal Co.*, 208 S.W.3d at 913.

138. *ITT Canteen Corp. v. Spradling*, 526 S.W.2d 11, 20 (Mo. 1975) (per curiam).

139. *Street v. Dir. of Revenue*, 361 S.W.3d 355, 358 (Mo. 2012) (en banc); *St. Louis Cty. v. Prestige Travel, Inc.*, 344 S.W.3d 708, 712 (Mo. 2011) (en banc).

140. *Fred Weber, Inc. v. Dir. of Revenue*, 452 S.W.3d 628, 630 (Mo. 2015) (en banc).

141. *President Casino, Inc. v. Dir. of Revenue*, 219 S.W.3d 235, 239 (Mo. 2007) (en banc); *State ex rel. Transp. Mfg. & Equip. Co. v. Bates*, 224 S.W.2d 996, 1000 (Mo. 1949) (en banc).

142. *Am. Eagle Waste Indus., LLC v. St. Louis Cty.*, 379 S.W.3d 813, 830 (Mo. 2012) (en banc); *Johnson v. Kraft Gen. Foods, Inc.*, 885 S.W.2d 334, 336 (Mo. 1994) (en banc).

143. *Am. Eagle Waste Indus.*, 379 S.W.3d at 830; *Kraft*, 885 S.W.2d at 336.

144. *Hagan v. Dir. of Revenue*, 968 S.W.2d 704, 706 (Mo. 1998) (en banc).

145. *Tolentino v. Starwood Hotels & Resorts Worldwide, Inc.*, 437 S.W.3d 754, 761 (Mo. 2014) (en banc).

146. *See, e.g., Util. Serv. Co. v. Dep’t of Labor & Indus. Relations*, 331 S.W.3d 654, 658 (Mo. 2011) (en banc) (a remedial statute should be “construed so as to meet the cases which are clearly within [its] spirit or reason . . . or within the evil which it was designed to remedy, provided [the] interpretation is not inconsistent with the language used”); *Ross v. Dir. of Revenue*, 311 S.W.3d 732, 735 (Mo. 2010) (en banc) (a remedial statute should be interpreted to “provide the public protection intended by the legislature”); *Hagan*, 968 S.W.2d at 706 (a remedial statute should be construed to

common thread is that a remedial statute should be generously construed to further its purpose.¹⁴⁷ When a statute has both remedial and penal characteristics, the purpose of its enforcement governs its construction.¹⁴⁸ If the remedy is sought, the statute is remedial and will be held applicable in case of doubt.¹⁴⁹ But if the penalty is sought, the statute is penal and will be construed in favor of the defendant if it is ambiguous.¹⁵⁰

III. DISCUSSION

This Part addresses the rules concerning statutory purpose and the absurdity of an outcome, both of which have the potential to give rise to unfairly unpredictable results. Statutory purpose can be set at varying levels of generality, even when only the text is considered.¹⁵¹ And when the circumstances surrounding the enactment of a statute or its consequences are also considered, purpose becomes even more malleable.¹⁵²

“accomplish the greatest public good”); *State on Info. of Dalton v. Miles Labs.*, 282 S.W.2d 564, 574 (Mo. 1955) (en banc) (a remedial statute should be interpreted to “suppress[] the mischief sought to be remedied”); *Tolentino*, 437 S.W.3d at 761 (a remedial statute should be construed to “broadly effectuate [its] purpose”); *Abrams v. Ohio Pac. Express*, 819 S.W.2d 338, 341 (Mo. 1991) (en banc) (a remedial statute should be interpreted to “liberally . . . effect [its] beneficial purpose”).

147. As I see it, this rule is arguably unsound due to the overly broad definition of a remedial statute. Applying this definition, it is difficult to identify any law that should not be liberally interpreted. Consider criminal laws. Laws punishing murder are enacted to protect life. Laws punishing robbery are enacted to protect property. Because these laws are remedial by definition, one would expect courts to construe these laws to favor punishment of the accused in doubtful cases. This certainly would make murder and robbery less appealing, but courts disfavor punishment when criminal laws are ambiguous. Tax laws are another example. Laws mandating the payment of taxes are surely enacted to support the public welfare. Because tax laws are remedial by definition, one would expect courts to construe these laws to favor taxation in uncertain cases, but courts disfavor taxation when tax laws are ambiguous.

148. *See State ex rel. Dresser Indus., Inc. v. Ruddy*, 592 S.W.2d 789, 794 (Mo. 1980) (en banc).

149. *Id.*

150. *Id.*

151. Max Radin, *Statutory Interpretation*, 43 HARV. L. REV. 863, 876 (1930).

152. A notorious example is *Holy Trinity Church v. United States*, a decision handed down by the Supreme Court in the latter part of the nineteenth century. 143 U.S. 457 (1892). In that case, the government unsuccessfully argued that a church, by hiring a British pastor, violated a statute proscribing “the importation . . . of foreigners . . . under contract . . . to perform labor or service of any kind.” *Id.* at 458 (emphasis added). Taking into account the harshness of the outcome, our nation’s Christian roots, and an influx of cheap labor, the Court concluded that the statute was intended to penalize only those employers who hired and imported an unskilled foreign laborer. *See id.* at 464.

An excellent illustration is *Dairyland Insurance Co. v. Hogan*,¹⁵³ a case in which the Supreme Court of Missouri took an expansive view of statutory purpose in order to avoid uncomfortable results that were dictated by an unambiguous statute. In pertinent part, the governing statute stated that:

No automobile liability insurance covering liability arising out of the . . . use of any motor vehicle shall be delivered . . . unless coverage is provided . . . for the protection of persons insured thereunder who are legally entitled to recover damages from *owners or operators of uninsured motor vehicles*¹⁵⁴

Before the case was transferred to the court “for the purpose of reexamining the existing law,”¹⁵⁵ lower courts had interpreted this statute to allow an insurer to deny a plaintiff’s claim if the vehicle, but not the driver, was insured.¹⁵⁶ One court, for example, rejected an argument that the statute should be construed to allow recovery whenever a motorist was uninsured, explaining that “the legislature intended . . . what the statute explicitly provide[d].”¹⁵⁷

Several canons would certainly support this interpretation. For example, the ordinary meaning canon would suggest that “uninsured motor vehicle” means just that – a vehicle that is not insured.¹⁵⁸ The negative implication canon would suggest that the specific inclusion of “uninsured motor vehicle” excludes “insured motor vehicle” from the scope of the statute.¹⁵⁹ The surplusage canon would suggest that every portion of the statute, including “uninsured motor vehicle,” is included for a particular purpose and should be given effect.¹⁶⁰ And the omitted case canon would suggest that the statute should be interpreted as it is written, not as it might have been written in hindsight – perhaps, for example, to cover situations in which an uninsured motorist borrowed an insured car and then negligently harmed another person.¹⁶¹ Taken together, these canons would suggest that the statute is unambiguous and the plain meaning rule ought to control.

Although one could argue otherwise on grounds of legislative intent or absurdity, other principles tend to cut against this argument. Because the canons shed light on legislative intent¹⁶² and several canons here suggest an insurer can deny a plaintiff’s claim if the vehicle is insured, a court could

153. 605 S.W.2d 798 (Mo. 1980) (en banc).

154. MO. REV. STAT. § 379.203.1 (2000) (emphasis added).

155. *Dairyland*, 605 S.W.2d at 799.

156. *See, e.g.*, *Miles v. State Farm Mut. Auto. Ins. Co.*, 519 S.W.2d 378, 379 (Mo. Ct. App. 1975).

157. *Id.*

158. *See supra* Part II.B.1, notes 17–23 and accompanying text.

159. *See supra* Part II.B.1, notes 39–42 and accompanying text.

160. *See supra* Part II.B.3, notes 65–69 and accompanying text.

161. *See supra* Part II.B.1, note 38 and accompanying text.

162. *See supra* Part II.A, notes 5–14 and accompanying text.

surely find that the legislature did not intend to allow recovery whenever a motorist was uninsured. And even assuming that the legislature enacted an absurd statute by allowing an insurer to deny a plaintiff's claim as long as the vehicle is insured, the statute is far from an ideal candidate for judicial correction. After all, courts rarely correct statutory language out of deference to later legislative choices, and the circumstances in which courts exercise this power are limited.¹⁶³ Rewriting the statute to address circumstances in which uninsured motorists drive insured vehicles would arguably amount to more than correcting a clerical error.

In *Hogan*, the court concluded otherwise and began its opinion by acknowledging the “theoretical possibility” that the statute might allow an insurer to deny a plaintiff's claim if the vehicle were insured.¹⁶⁴ The court then recited its governing rule: “[W]e must . . . recognize the cardinal rule that the intention of an act will prevail over the literal sense of its terms, otherwise it might lead to absurd consequences”¹⁶⁵ From there, the court reasoned that the purpose of the statute was to compensate any plaintiff who was negligently harmed by an uninsured motorist.¹⁶⁶ To further this purpose and avoid absurd consequences, the court concluded that a “more precise term” for “uninsured motor vehicle” was “vehicle being operated by a person whose legal responsibility for damages negligently inflicted is not covered by any liability insurance provision.”¹⁶⁷ This sort of approach – broadly defining statutory purpose and departing from unambiguous language on grounds that absurd, unintended results follow – is not uncommon.¹⁶⁸

But the court has also defined purpose very narrowly, even when doing so yields harsh outcomes. In one case, for example, the court held that a plaintiff's cause of action was time-barred by a statute of limitation, even though the likelihood that the plaintiff could discover her injury before the

163. See *supra* Part II.B.3, notes 83–87 and accompanying text.

164. *Dairyland Ins. Co. v. Hogan*, 605 S.W.2d 798, 799 (Mo. 1980) (en banc).

165. *Id.* at 800.

166. *Id.*

167. *Id.*

168. For example, the court was asked to interpret a statute providing that an employer's notice of appeal would be considered filed “as of the date endorsed by the United States post office on the envelope.” *Abrams v. Ohio Pac. Express*, 819 S.W.2d 338, 339 (Mo. 1991) (en banc). According to the court, the overarching purpose of this statute – a “remedial” statute at that – was to allow employers to appeal adverse judgments. *Id.* at 341. To further that purpose and sidestep an “absurd” result, the court declined to invoke the last antecedent rule and held that the employer's notice of appeal was timely on grounds that the date imprinted on the envelope by a postage meter was “the date endorsed by the United States post office on the envelope.” *Id.* On somewhat similar facts, the Supreme Court was entirely unconcerned with the “broader” purpose of a statute governing the timeliness of legal filings. See *United States v. Locke*, 471 U.S. 84, 90–92 (1985) (explaining that the plaintiff's filing on December 31 was untimely and rejecting the argument that Congress actually meant “on or before December 31 of each year” when it wrote “prior to December 31”).

limitations period expired was slim at best and non-existent at worst. In that case, the plaintiff discovered that the defendant surgeons had left a rubber dam in the lower region of her back more than eleven years after the fact.¹⁶⁹ Before the rubber dam was removed, the plaintiff visited several physicians, none of whom located the foreign object inside her body.¹⁷⁰ After the plaintiff brought suit for medical malpractice, the trial court entered judgment in favor of the defendants on grounds that the cause of action was time-barred.¹⁷¹ On appeal, the plaintiff cited the harshness of the outcome in arguing that the limitation period should not begin to run until she discovered the defendants' malpractice, particularly when other trained physicians could not discover the rubber dam.¹⁷² The court responded as follows:

This argument is appealing and has some force, *so far as justice is concerned*; in that respect the conclusion we reach is distasteful to us. But, the legislative branch of the government has determined the policy of the state and clearly fixed the time when the limitation period begins to run against actions for malpractice. This argument addressed to the court properly should be addressed to the General Assembly. Our function is to interpret the law; it is not to disregard the law as written by the General Assembly.¹⁷³

More recently, the court encountered a “tragic and deeply concerning” case in which a hospital employee intentionally administered lethal doses of medication to several patients.¹⁷⁴ The plaintiffs, family members of those patients, brought five wrongful death suits against the hospital once the employee's actions – actions purportedly concealed by the hospital – came to light.¹⁷⁵ In each case, a trial court entered judgment in favor of the hospital on the ground that the action was time-barred by the statute of limitation.¹⁷⁶ Appeals followed, and all cases were consolidated before the court.¹⁷⁷ On appeal, the plaintiffs urged the court to construe the limitation period “to avoid frustrating the remedial purpose behind wrongful death.”¹⁷⁸ The court rejected this “proposed ‘freewheeling’ approach to statutory interpretation,”

169. *Laughlin v. Forgrave*, 432 S.W.2d 308, 310 (Mo. 1968) (en banc), *superseded by statute as stated in* *Ambers-Phillips v. SSM DePaul Health Ctr.*, 459 S.W.3d 901 (Mo. 2015) (en banc).

170. *Id.*

171. *Id.*

172. *Id.* at 314.

173. *Id.* (emphasis added).

174. *Boland v. Saint Luke's Health Sys., Inc.*, 471 S.W.3d 703, 705 (Mo. 2015) (en banc), *modified* (Oct. 27, 2015).

175. *Id.* at 707.

176. *Id.* at 704–05.

177. *Id.* at 705.

178. *Id.* at 710.

explaining that the remedial purpose underlying wrongful death could not “be used to override or amend its statutory language.”¹⁷⁹

As the cases above suggest, it seems difficult to predict whether courts will define statutory purpose broadly or narrowly when an outcome is distasteful. But as a conversation between Judge Learned Hand and Justice Oliver Wendell Holmes might suggest, perhaps a court’s view of its role in our system of government is the deciding factor:

I remember once I was with [Justice Oliver Wendell Holmes]; it was a Saturday when the Court was to confer. . . . When we got down to the Capitol, I wanted to provoke a response, so as he walked off, I said to him, “Well, sir, goodbye. Do justice!” He turned quite sharply and he said, “Come here. Come here.” I answered, “Oh, I know, I know.” He replied, “That is not my job. My job is to play the game according to the rules.”¹⁸⁰

IV. CONCLUSION

Although canons and presumptions can be collected, the law of statutory interpretation is not too fit for orderly study. Because different rules often point to different outcomes, statutory interpretation effectively amounts to a balancing test between different and competing canons.¹⁸¹ The interpretation of a statute could be analogized to a determination of fair use, a task which Learned Hand described as “the most troublesome in the whole law of copyright.”¹⁸² But while a fair use analysis is limited to four factors,¹⁸³ the interpretation of a statute is not. And because the canons and presumptions have no assigned weight, courts may depart from an unambiguous statute on

179. *Id.*

180. John M. Walker, Jr., *Judicial Tendencies in Statutory Construction: Differing Views on the Role of the Judge*, 58 N.Y.U. ANN. SURV. AM. L. 203, 203 (2002) (alteration in original) (footnote omitted). Another commentator advances a similar argument. Karl N. Llewellyn, *Remarks on the Theory of Appellate Decisions and the Rules or Canons About How Statutes Are to Be Construed*, 3 VAND. L. REV. 395, 397 (1950) (“There is the man who loves creativeness, who can without loss of sleep combine risk-taking with responsibility, who sees and feels institutions as things built and to be built to serve functions, and who sees the functions as vital and law as a tool to be eternally reoriented to justice and to general welfare. There is the other man who loves order, who finds risk uncomfortable and has seen so much irresponsible or unwise innovation that responsibility to him means caution, who sees and feels institutions as the tested, slow-built ways which for all their faults are man’s sole safeguard against relapse into barbarism, and who regards reorientation of the law our polity as essentially committed to the legislature.”).

181. See *supra* Part II.A, notes 5–14 and accompanying text.

182. *Dellar v. Samuel Goldwyn, Inc.*, 104 F.2d 661, 662 (2d Cir. 1939) (per curiam).

183. See 17 U.S.C. § 107 (2012).

grounds that it dictates an absurd, unintended result, even when that outcome appears to be favored by several other rules.¹⁸⁴

Although the rules concerning statutory purpose and absurdity allow courts to “do justice,” this “justice” may be unfairly unpredictable. There is no telling whether courts will conclude that a particular interpretation merely attempts to “override or amend . . . statutory language”¹⁸⁵ or furthers the broader purpose of a statute by avoiding an absurd outcome. To provide more certainty on this front, the Supreme Court of Missouri could explain what sort of outcome justifies departing from an unambiguous text on grounds of absurdity. Perhaps the standards discussed above – an outcome “so unreasonable ‘as to shock general common sense,’”¹⁸⁶ or an outcome “that no reasonable person could approve” – would suffice.¹⁸⁷ Although a standard would eliminate some flexibility, it would give lawyers some idea as to whether an argument grounded in statutory purpose and aimed at avoiding absurdity is likely to prevail.

184. *See supra* Part III.

185. *Boland v. St. Luke’s Health Sys., Inc.*, 471 S.W.3d 703, 710 (Mo. 2015) (en banc), *modified* (Oct. 27, 2015).

186. 2B SUTHERLAND, *supra* note 3, § 54:6.

187. SCALIA & GARNER, *supra* note 3, § 37.

